

**IOWA DEPARTMENT OF NATURAL RESOURCES**  
**ADMINISTRATIVE CONSENT ORDER**

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**IN THE MATTER OF:**

**AGRILAND FS, INC.**  
1608 160th Street  
Casey, IA 50048

**DNR ID # 052311-MAC-1145**

**ADMINISTRATIVE  
CONSENT ORDER**  
**2012-WW-14**

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**TO: Agriland FS, Inc.**  
**Attn: Brett Hafner**  
**425 Hwy 1 & 92**  
**Washington, IA 52353**

**Agriland FS, Inc.**  
**Attn: Curtis Hoakison**  
**1608 160th Street**  
**Casey, IA 50048**

**Agriland FS, Inc.**  
**Attn: Edward G. Parker**  
**5400 University Ave.**  
**West Des Moines, IA 50266**

**I. SUMMARY**

The Iowa Department of Natural Resources (Department) and Agriland FS, Inc. (Agriland) hereby agree to the following Administrative Consent Order (Order). Agriland agrees to pay fish restitution and investigation costs of \$6,258.84 and an administrative penalty of \$10,000.00 to the Department. See Sections IV and V for more details.

Any questions regarding this Order should be directed to:

**Relating to technical requirements:**

Keith Wilken  
Iowa Department of Natural Resources  
1401 Sunnyside Lane  
Atlantic, IA 50022  
Ph: 712/262-4177

**Relating to legal requirements:**

Aaron Brees, Attorney  
Iowa Department of Natural Resources  
Des Moines, Iowa 50319-0034  
Ph: 515/281-5965  
aaron.brees@dnr.iowa.gov

**Payment of penalty to:**

Director of the Iowa DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50321-0034

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## II. JURISDICTION

This Order is issued pursuant to Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part I (water quality) and the rules promulgated or permits issued pursuant thereto; Iowa Code section 481A.151, which authorizes the collection of restitution costs for harm to wildlife; and Iowa Code section 455B.109 and administrative rules in 567 Iowa Administrative Code (I.A.C.) chapter 10, which authorize the Director to assess administrative penalties up to \$10,000.

## III. STATEMENT OF FACTS

For purposes of this settlement only, Agriland agrees to the allegations in paragraphs 9, 10, 11, 13, 14, 16, 18 and 19 of this Order. Agri neither admits nor denies the remaining allegations:

1. Agriland is the owner of an agricultural chemical facility located at 1608 160th Street, Casey, Iowa, in Adair County. The facility stores, handles, and transports fertilizers, petroleum, pesticides, and herbicides. Some features of this facility include a bulk storage area with secondary containment, a dry fertilizer storage building, a dry fertilizer load out with concrete basin, outdoor storage for anhydrous ammonia tanks, and a storm water catchment basin.
2. On May 23, 2011 at approximately 11:45 AM, Bill Crees called Department Field Office 4 (FO4) to report a fish kill in his private pond located at 1738 160th Street, Casey, Iowa.
3. At approximately 12:30 PM, Department environmental specialists Melodie Carr and Keith Wilken arrived at the Crees pond to investigate. They were met there by Janet Crees who stated that she first noticed the dead fish on May 22, 2011 while mowing around the pond.
4. Ms. Carr and Mr. Wilken observed dead fish at the edges of the pond and noted "white/yellowish-green foam" on the water at the pond outlet. Photographs of the fish and foam were taken.
5. At approximately 1:50 PM, field tests were conducted on water from the pond outlet. These tests produced results of 30-60 ppm of ammonia, 6-8 ppm dissolved oxygen, a pH of 8.6, and a temperature of 75 degrees Fahrenheit. Water samples were collected for later analysis by the State Hygienic Lab.
6. At approximately 2:15 PM, field tests were conducted on water from the pond inlet. These tests produced results of 10-30 ppm of ammonia, 3-4 ppm dissolved oxygen, a pH

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of 7.4, and a temperature of 82 degrees Fahrenheit. Water samples were collected for later analysis by the State Hygienic Lab.

7. At approximately 2:30 PM, Field Office staff met with Fisheries staff at the Crees pond. Fisheries staff agreed to conduct a count of dead fish.

8. At approximately 3:30 PM, environmental specialist Ryan Young, Ms. Carr, and Mr. Wilken visited the Agriland facility. They observed that the facility was located upgradient of the Crees pond. Liquid fertilizer spills were observed on the north side of the facility. Evidence of past unreported spills, in the form of burnt vegetation, was observed on the north side of the facility. Dry fertilizer spills were observed between the dry fertilizer storage building and the office.

9. While at the facility, Mr. Young, Ms. Carr, and Mr. Wilken (Department staff) met with Curtis Hoakison, the facility manager. They informed Mr. Hoakison that they were investigating a fish kill downgradient from the facility that appeared to be caused by high levels of ammonia-nitrogen. They asked Mr. Hoakison what had occurred at the facility recently that might have caused the fish kill. Mr. Hoakison responded that Agriland staff had opened valves on the liquid catchment basin on the south side of the facility. Mr. Hoakison noted that the catchment basin could not contain additional rainwater, and therefore the valves were opened to release liquid from the basin and reduce pressure on the basin prior to the next precipitation event. Mr. Hoakison stated that they routinely wash out spray tanks on-site, and that the wash water likely ends up in the basin as that water is not contained. Mr. Hoakison also noted that sprayer operators allow hoses to drain onto the ground and the liquid from the hoses is not contained. This liquid, or residual from it, may also end up in the catchment basin.

10. While at the facility, Department staff informed Mr. Hoakison of the following:

- that basins which accumulate a water/fertilizer mixture generally exhibit extremely high levels of ammonia-nitrogen,
- that ammonia levels as low as 5 to 10 ppm can be toxic to fish,
- that spilled chemicals were observed on the north side of the facility that had not been reported or cleaned up,
- that evidence of other spills (i.e., burnt grass) was observed on the north side of the facility that had not been reported or cleaned up,
- that spills of dry fertilizer were observed on the ground surface that had not been reported or cleaned up.

11. While at the facility and in the presence of Mr. Hoakison, Department staff conducted a field test of water in the Agriland catchment basin located on the south side of the facility.

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12. The field test yielded greater than 300 ppm of ammonia as nitrogen, with 300 ppm being the upper limit of the test's detection capability. Department staff collected water samples from the catchment basin for later analysis by the State Hygienic Laboratory.

13. On May 24, 2011, Mr. Young, Mr. Wilken, and Department supervisor Roger Bruner visited the Agriland facility. At that time, they took photographs showing burnt vegetation on the north side of the facility. They then met with Mr. Hoakison and Brett Hafner, Agriland's Environmental, Health, & Safety manager. Department staff summarized the investigation to that point and discussed their conclusion regarding the cause of the fish kill with Mr. Hoakison and Mr. Hafner.

14. Department staff then informed Mr. Hafner of the following list of requirements:

- Clean up standing spilled chemicals on the north side of the facility immediately.
- Excavate all spills on the north side of the facility to sight and smell criteria. Land apply the excavated soil at an agronomic rate.
- Submit a written plan for adequate disposal of wastewater within the catchment basin on the south side of the facility.
- Remove gate valves from the catchment basin on the south side of the facility.
- Submit a plan to address housekeeping issues (i.e., spillage of chemicals and fertilizers) identified at the facility.
- Submit a plan to address the accumulation of liquid within the concrete basin located beneath the dry fertilizer load-out.
- Address the wastewater resulting from the routine cleaning of tanks.
- Cease disposal of liquid remaining in hoses to the ground surface immediately.
- Conduct a Site Assessment in accordance with 567 Chapter 133 of the Iowa Administrative Code.

15. On May 24, 2011, FO4 staff were informed by Fisheries Bureau staff that the fish kill count found 6,510 dead fish with a restitution value of \$3,254.24, and found no signs of live fish remaining in the pond.

16. On June 16, 2011, Ms. Carr and Mr. Wilken visited the Agriland facility to meet with Mr. Hoakison. The purpose of this meeting was to observe Agriland's progress in complying with the items listed in subsection 13 above, and to inform Mr. Hoakison of the results of the fish count and lab analysis of the water samples.

17. The field test results and laboratory results are presented below in Table A and Table B respectively.

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**TABLE A  
FIELD TEST RESULTS**

Location	Ammonia	Dissolved Oxygen	pH	Temperature (Fahrenheit)
Agriland Catchment Basin	>300 ppm			
Crees Pond Inlet	10 - 30 ppm	3 - 4 ppm	7.4	82 degrees
Crees Pond Dam Outlet	30 - 60 ppm	6 - 8 ppm	8.6	75 degrees

**TABLE B  
LABORATORY ANALYTICAL RESULTS**

Location	Ammonia	Atrazine	Metolachlor	Acetochlor	Desethyl Atrazine	Propazine
Agriland Catchment Basin	690 ppm	9,000 ppb	240 ppb	410 ppb	260 ppb	<100 ppb
Crees Pond Inlet	14 ppm	52 ppb	5.9 ppb	6.1 ppb	2.0 ppb	0.76 ppb
Crees Pond Dam Outlet	32 ppm	130 ppb	13 ppb	16 ppb	3.1 ppb	1.2 ppb

18. On July 7, 2011, Mr. Hafner confirmed that the following products containing Atrazine were used at the Agriland facility: Callisto Xtra, Harness Xtra 5.6, Lexar, and Infantry 4L. All four products are restricted use herbicides/ pesticides due to ground and surface water concerns. Labels for these products include the following statements:

Callisto Xtra – “This pesticide is toxic to aquatic invertebrates. Do not apply directly to water, to areas where surface water is present .... Do not contaminate water when disposing of equipment wash water.” “It is a violation of Federal law to use this product in a manner inconsistent with its labeling.” “Dispose of rinsate ... in an appropriate manner”.

Harness Xtra 5.6L – “This product is toxic to fish and aquatic invertebrates. Do not apply directly to water, or to areas where surface water is present.... Do not contaminate water when disposing of equipment wash waters.” “It is a violation of Federal law to use this product in a manner inconsistent with its labeling.”

Lexar – “This pesticide is toxic to aquatic invertebrates. Do not apply directly to water, to areas where surface water is present.... Do not contaminate water when disposing of equipment wash water.” “It is a violation of federal law to use this

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product in a manner inconsistent with its labeling." "Rinse spray equipment. Pesticide wastes are acutely hazardous. Improper disposal of excess pesticide, spray mixture, or rinsate is a violation of Federal law."

Infantry – "This pesticide is toxic to aquatic invertebrates. Do not apply directly to water, to areas where surface water is present.... Do not contaminate water when disposing of equipment wash water." "It is a violation of federal law to use this product in a manner inconsistent with its labeling." "Wastes resulting from the use of this product are acutely toxic. Improper disposal of unused pesticide, spray mixture, or rinsate is a violation of federal law."

19. On June 27 and July 1, 2011, Mr. Hafner and Mr. Hoakison contacted Mr. Wilken to inform him of actions taken by Agriland to address IDNR's requirements and ensure future compliance. To date, Agriland has substantially complied with the requirements listed in subsection 13 above.

#### IV. CONCLUSIONS OF LAW

For purposes of this settlement only, Agriland agrees to the conclusion stated in paragraph 6 of this Order. Agri neither admits nor denies the remaining conclusions:

1. Iowa Code section 455B.186(1) and 567 I.A.C. 62.1(1) prohibit the discharge of "a pollutant" into "a water of the state" unless it is released pursuant to a valid permit issued by the director. National Pollution Discharge Elimination System (NPDES) permits are issued to point sources pursuant to Iowa Code section 455B.197 and 567 I.A.C. chapter 64. The Environmental Protection Commission (EPC) has adopted federal effluent limitation standards by reference, and imposed different standards when necessary to comply with applicable water quality standards. See 567 I.A.C. 62.8(2).

2. A "pollutant" is defined in Iowa Code section 455B.171(20) as "sewage, industrial waste, or other waste." Nitrogen fertilizer, such as that released into the environment in the present case, and restricted use herbicides/pesticides when used in a manner inconsistent with their labels, can be pollutants under this definition.

3. The Crees pond, outflow stream, and the drainage way where the water released from the Agriland catchment basin flowed are "waters of the state" pursuant to Iowa Code section 455B.171(39) which defines the term to include "any stream,...watercourse, waterway,...drainage system, and any other body or accumulation of water...natural or artificial, public or private, which are contained within...the state..."

4. As Agriland did not have a NPDES permit authorizing the discharge of the above named pollutants to these waters, it has discharged a pollutant into waters of the state in violation of the above provisions.

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5. Iowa Code section 455B.173 states that the EPC shall develop water quality standards which shall, at a minimum, maintain the existing quality of the water of the state. The EPC has done so in 567 I.A.C. chapter 61.

6. 567 I.A.C. 61.3(2) states that all surface waters of the State "shall be free from substances attributable to wastewater discharges or agricultural practices...which are acutely toxic to human, animal, or plant life." Agriland's May 2011 discharge of contaminated water from its catchment basin is a violation of this provision.

7. Iowa Code section 481A.151 states that any person who is liable for polluting water of the state in violation of state law shall be required to pay restitution for any resulting injury to wild animals. This section authorizes the Natural Resource Commission (NRC) to adopt rules applicable to the method of calculating restitution assessments and authorizes the Department to recover these assessments through Iowa Code chapter 17A contested case procedures. The NRC has adopted such rules in 571 I.A.C. 113.

8. Based on the authority provided by and methods specified in 571 I.A.C. 113, the Department is authorized to collect the following:

Fish restitution	\$3,254.24
Fisheries investigation costs	\$364.80
Field Services investigation costs	\$2,639.80

9. 567 I.A.C. 131.1 defines a "hazardous substance" as "any substance or mixture of substances that presents a danger to the public health or safety and includes, but is not limited to, a substance that is toxic, corrosive, or flammable.... The following are examples of substances which, in sufficient quantity, may be hazardous: ...fertilizers; ...pesticides...." The nitrogen fertilizer and pesticides stored or in use at Agriland are hazardous substances under this definition.

10. 567 I.A.C. 131.1 defines a "hazardous condition" as "any situation involving the actual, imminent or probable spillage, leakage, or release of a hazardous substance onto the land, into a water of the state or into the atmosphere which, because of the quantity, strength and toxicity of the hazardous substance, its mobility in the environment and its persistence, creates an immediate or potential danger to the public health or safety or to the environment." The releases of the above mentioned fertilizer resulting in burned vegetation, the observed spillage of fertilizer at the facility, and the releases of contaminated water from the catchment basin represent hazardous conditions under this definition.

11. 567 I.A.C. 131.2 states that a "person manufacturing, storing, handling, transporting, or disposing of a hazardous substance shall notify the department ... of the occurrence of a hazardous condition as soon as possible but not later than six hours after the onset of the hazardous condition or discovery of the hazardous condition." Agriland did not notify the Department of the above occurrences, resulting in violations of this provision.

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**V. ORDER**

THEREFORE, the Department hereby orders and Agriland agrees to the following:

1. Agriland shall pay to the order of the Iowa Department of Natural Resources a total of \$6,258.84 for fish restitution and investigation costs within 30 days of receipt of this Order.
2. Agriland shall pay an administrative penalty of \$10,000.00 to the order of the Iowa Department of Natural Resources within 30 days of receipt of this Order.

**VI. PENALTY**

The Department concludes as follows:

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties in Iowa District Court of up to \$5,000 per day of violation for the violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision. Additionally, Iowa Code section 455B.109 authorizes the EPC to establish by rule a schedule of civil penalties up to \$10,000 which may be assessed administratively. The EPC has adopted this schedule with procedures and criteria for assessment of penalties in 567 I.A.C. chapter 10.

**ECONOMIC BENEFIT:** The unreported liquid fertilizer spills and dry fertilizer spills at the site were cleaned up at the Department's direction. Therefore, no economic benefit was gained from not reporting or cleaning up these spills. Proper disposal of the contaminated catchment basin liquid could have been conducted using Agriland equipment and staff. Therefore, the only economic benefit derived from improper disposal of the liquid was the cost of Agriland staff time. Due to the relatively small benefit accrued and the difficulty in determining an exact figure, no penalty is assessed for this factor.

**GRAVITY:** Multiple violations were found at this site. Serious water quality violations were found, resulting in actual harm to the environment. The Crees pond suffered a complete fish kill. It will need to be restocked and will likely take years to recover to its prior condition. Due to the multiple, serious violations, \$6,000.00 is assessed for this factor.

**CULPABILITY:** Agriland has a duty to be aware of and comply with statutes and rules that apply to its business, especially given the highly regulated nature of the business and the products it stores and uses. The manual discharge of a highly contaminated liquid into a water of the state exhibits, at a minimum, very poor judgment. In addition,



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Agriland ignored prohibitions on the labels of restricted use products, contributing to these violations. Therefore, a total of \$4,000 is assessed for this factor.

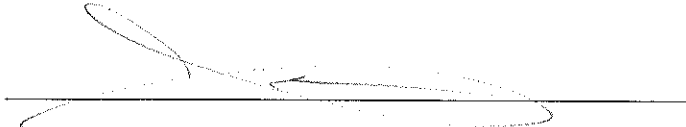
Based on the above factors, a total penalty amount of \$10,000 is assessed.

**VII. WAIVER OF APPEAL RIGHTS**

Iowa Code sections 455B.175 and 481A.151, and 561 I.A.C. 7.4(1), as adopted by reference by 567 I.A.C. chapter 7 and 571 I.A.C. chapter 7, authorize a written notice of appeal to the EPC and NRC, respectively. This Order is entered into knowingly by and with the consent of Agriland. By signing this Order all rights to appeal this Order are waived.

**VIII. NONCOMPLIANCE**

Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.175.

  
Dated this 17 day of April, 2012

  
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ROGER L. LANDE, DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 17th day of May, 2012

Agriland FS, Inc.; Keith Wilken; Field Office 4; Aaron Brees; I(C)(1), I(C)(6)(a), IV(A).



Date: 05/29/2012

COLLEEN ZELIADT:

The following is in response to your 05/29/2012 request for delivery information on your Certified Mail(TM) item number 7199 9991 7031 0665 8785. The delivery record shows that this item was delivered on 05/29/2012 at 09:34 AM in WASHINGTON, IA 52353. The scanned image of the recipient information is provided below.

Signature of Recipient:

A scanned image of a handwritten signature, "Brett Hapner", written in black ink on a white background. The signature is written over a horizontal line.

Address of Recipient:

A scanned image of a handwritten address, "425 Highway 1492", written in black ink on a white background. The address is written over a horizontal line.

Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local Post Office or postal representative.

Sincerely,

United States Postal Service